

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)

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Amendment of Section 2.106 of the
Commission's Rules to Allocate
Spectrum at 2 GHz for Use by
the Mobile-Satellite Service)

) ET Docket No. 95-18
) RM-7927
) PP-28
)

Federal Communications Commission
Chair of Industry

**OPPOSITION OF THE AFFILIATED AMERICAN RAILROADS
TO PETITION FOR PARTIAL RECONSIDERATION OF THE
MSS COALITION**

The Affiliated American Railroads, by their undersigned counsel, hereby oppose the "Petition For Partial Reconsideration Of The MSS Coalition" filed in the above-captioned proceeding on May 20, 1997 (hereinafter "Petition"). This Opposition is prompted by the Commission's invitation in the Public Notice, 74386, released May 30, 1997, for interested parties to file oppositions to the Coalition's Petition.

I. BACKGROUND

In its First Report and Order ("R&O") in this proceeding released March 14, 1997, the Commission decided to allocate the 1990-2025 MHz and the 2165-2200 MHz band to the Mobile Satellite Service ("MSS"). Because the Broadcast Auxiliary Service ("BAS") currently uses the 1990-2010 MHz band, the Commission decided to relocate that service to the 2110-2145 MHz band. In turn, because the 2110-2145 MHz band currently is used by common carrier and private fixed microwave users, it would be necessary to relocate those users to other frequencies. In addition, fixed microwave

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users (such as the railroads) would face relocation from the 2165-2200 MHz band in order to accommodate the MSS downlink. Importantly, the Commission ruled that the MSS parties must pay the relocation costs of incumbent users of these frequency bands.

In its Petition, the MSS Coalition requested the Commission to reconsider its relocation decision, proposing that MSS users not pay the relocation costs of displaced incumbents.

II. MSS PROPONENTS MUST BE REQUIRED TO PAY FOR THE RELOCATION COSTS OF DISPLACED INCUMBENTS

The Coalition's Petition represents yet another attempt by the MSS community to avoid having to pay the relocation costs of displaced Fixed Service ("FS") incumbents, based on the Coalition's rejection of the fundamental equitable principle that those who receive the benefits from the Commission's reallocation of spectrum should bear the burden and expense of relocating displaced incumbents.

The Coalition's arguments against the obligation to pay relocation expenses are essentially the same as those previously considered and rejected by the Commission. Specifically, the Coalition argues that the Commission's decision to require MSS operators to pay relocation costs "imposes a huge and perhaps insurmountable burden on 2 GHz MSS operators."^{1/} Citing estimates by COMSAT, the Coalition contends that the costs of relocating all BAS operators in the 1990-2055 MHz band, as

^{1/} Petition at 24.

well as the concomitant costs of relocating all FS operators with paired links in the 2110-2130 MHz 2160-2180 MHz bands, will approach \$1 billion.^{2/} It further claims that these costs could approach \$3 billion if MSS/FS frequency sharing in the 2165-2200 MHz downlink band proves not to be feasible and MSS operators are required to relocate those incumbents as well.^{3/}

Whether these cost predictions are accurate or not, the Commission has properly rejected such arguments in earlier stages of this proceeding, as well in other proceedings. The manifest fairness of the Commission's decision that, as between MSS newcomers and FS incumbents, the beneficiaries of the new allocation should pay the displacement costs, cannot be gainsaid. The alternative, as repeatedly proposed by members of the MSS Coalition, would burden the displaced licensees with the expense of relocation, while conferring on the Coalition's members an unprecedented windfall. For private sector FS licensees such as railroads, pipeline operators and the like, the burden would be borne either by their customers (in the form of higher prices for goods and services if the costs are passed on) or by their shareholders (in the form of lower returns if the costs are absorbed). For public sector licensees such as states and counties that operate FS links as part of public safety networks, the burden would be borne by the taxpayers. In other words, if the Coalition gets its way, its members will receive all the benefits of access to this spectrum while somebody else bears the burden and expense of relocating the

^{2/} Id.

^{3/} Id. at fn. 65.

present users to other bands -- clearly an unfair and inequitable result. The Commission should reject the Coalition's request and remain steadfast in its decision to require MSS operators to pay all relocation costs of displaced FS incumbents.

III. THE PCS MODEL IS APPROPRIATE FOR MSS

In its Petition, the Coalition also contended that the relocation requirements adopted in the PCS proceeding should not apply to MSS "because the circumstances faced by MSS operators in 2 GHz are entirely different from those faced by PCS operators."^{4/}

In support of this contention, the Coalition first argued that, unlike PCS relocation which is local in nature, MSS relocation is national in scope.^{5/} According to the Coalition, requiring MSS operators to relocate all FS and BAS operations throughout the nation is probably unworkable, since it would entail considerable expense and time to locate and negotiate with each incumbent individually.^{6/} Second, the Coalition contended that, in contrast to PCS and FS operations, frequency sharing may be possible for MSS and FS operations in the 2165-2200 MHz band.^{7/} In this regard, the Coalition claims that by imposing FS relocation expenses for the paired links at 2110-2130/2160-2180 MHz bands, the Commission has

4/ Id. at 28.

5/ Id.

6/ Id. at 28-29.

7/ Id. at 29.

undermined its decision to encourage MSS/FS sharing in the 2165-2200 MHz band because incumbents in that band will be "encouraged to demand reimbursed relocation rather than continue to cooperate in efforts to share spectrum both in the paired bands at 2110-2130 and 2160-2180 MHz and in the remainder of the downlink at 2180-2200 MHz."^{8/}

Neither of these arguments renders the PCS relocation model inappropriate for MSS. As to the alleged difficulties in orchestrating national relocation of FS incumbents, the process and procedures for implementing FS relocation in the PCS context can be adapted, with modification, to the MSS context. Indeed, as members of the MSS Coalition are well aware, a TIA study on how to adapt PCS frequency coordination procedures for nationwide application is already underway. Once FS incumbents are identified for purposes of frequency coordination, MSS operators will have the opportunity to negotiate the terms of relocation with these incumbents where displacement is necessary.

The Coalition's second argument -- that the PCS model is inappropriate because MSS/FS frequency sharing is possible -- is particularly specious. Obviously, as long as such sharing is feasible, there would be no need to relocate and hence no need to require MSS operators to pay relocation costs. The applicability of the PCS model arises precisely where frequency sharing is not feasible and incumbent relocation becomes necessary. Under these circumstances, requiring spectrum

^{8/} Id. at 30.

newcomers to pay incumbents' relocation costs is as appropriate in this proceeding as it was in the PCS proceeding.

IV. RELOCATION COSTS WERE NOT AT ISSUE IN THE "BIG LEO" CONTEXT BECAUSE MSS DEPLOYMENT AT 1.6/2.4 GHz DID NOT INVOLVE DISPLACEMENT OF TERRESTRIAL INCUMBENTS

The Coalition accuses the Commission of unfair and discriminatory treatment of 2-GHz MSS operators by requiring them to pay FS relocation costs when the Big LEO MSS systems operating in other frequency bands were not required to pay such costs: "Because the U.S.-licensed [Big LEO] global MSS systems at 1.6/2.4 GHz have already received licenses and gained access to the U.S. market without having to bear such potentially burdensome [incumbent relocation] costs, the Commission's treatment of non-U.S.-licensed and U.S.-licensed MSS entities at 2 GHz is unfairly discriminatory and anticompetitive." ^{9/}

That argument is wholly without merit. The reason other MSS operators were not required to pay incumbent relocation costs was because there were no terrestrial incumbents occupying the 1.6/2.4 GHz band that threatened harmful interference to Big LEO MSS systems and vice versa. The situation confronting the 2 GHz MSS operators is entirely different. They have freely chosen to operate in a frequency band already occupied by terrestrial incumbents; the Commission's decision does no more than require them to abide by the logical and equitable consequence of that choice, i.e., to assume financial responsibility for relocating the BAS and FS incumbents they

^{9/} Id. at 31.

will displace. They should not be relieved of that responsibility based on inappropriate comparisons to other systems operating in other bands involving totally different facts and circumstances.

V. COMPENSATING INCUMBENTS FOR RELOCATION COSTS IS THE PRICE MSS PROPONENTS MUST PAY FOR ENTERING THE MARKETPLACE, WHETHER OR NOT A "GLOBAL PRECEDENT" IS THEREBY SET

The Coalition contends that the Commission's decision requiring MSS operators to pay FS relocation costs "establishes a precedent" that could cause other nations to adopt similar measures in this and other bands.^{10/} In a footnote, the Coalition observes that "the FCC's 2 GHz relocation decision could precipitate relocation reimbursement or compensation policies internationally, thereby potentially affecting the U.S.-licensed Big LEO MSS systems ... and other planned FSS/MSS satellite services at 30/20 GHz (with respect to incumbent terrestrial services)."^{11/}

The essence of the Coalition's argument is that other nations may follow the U.S. lead in treating incumbents fairly by requiring the MSS newcomers to pay the relocation costs of the displaced incumbents. The suggestion is that the equitable principle of requiring the beneficiary to pay relocation expenses somehow loses its validity the more widely it is applied. Such a suggestion is, of course, absurd. The principle is as valid in one nation as another, and if it eventually gains worldwide acceptance, then so be it; and if MSS operators in the 2 GHz band eventually are

^{10/} Id. at 34.

^{11/} Id. at fn. 84.

required to pay global relocation costs to clear incumbents from frequency bands in which the newcomers will enjoy a major benefit, then that is simply the price they must pay for the advantage of gaining access to a global market.

VI. CONCLUSION

For the reasons set out above, the railroad industry opposes the Coalition's Petition for Reconsideration and urges the Commission to uphold its decision to require MSS entrants using the 2.1 GHz band pay the relocation costs of all displaced incumbents.

Respectfully submitted,

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June 19, 1997

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 19th day of June, 1997, caused copies of the foregoing "Opposition to Petition for Partial Reconsideration of the MSS Coalition" to be served by first class mail, postage prepaid to the following:

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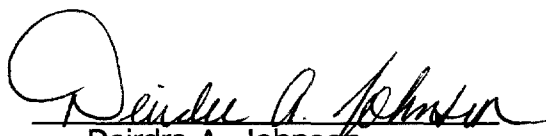
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